

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

JODIE and ANDY DRANGE, each  
individually and on behalf of other  
persons similarly situated,

Plaintiffs,

vs.

MOUNTAIN WEST FARM BUREAU  
MUTUAL INSURANCE COMPANY  
and DOES 1-100,

Defendants.

CV 20-30-BLG-SPW

ORDER RE DEFENDANT'S  
MOTION TO STAY

Before the Court is Defendant Mountain West Farm Bureau Mutual Insurance Company's ("Mountain West") motion to stay or defer consideration of Plaintiffs' motion for summary judgment on Count I (Doc. 39). (Doc. 51).

Mountain West argues the motion for summary judgment is premature and violates the Scheduling Order (Doc. 32) agreed to by both parties. Specifically, the parties agreed to conduct discovery and motions practice in two phases: Phase 1 would consist of discovery and motions for legal issues arising under Count III of the Second Amended Complaint, Phase 2 would cover discovery and motions for the remaining legal issues. Because Plaintiffs' summary judgment motion does not concern legal issues arising under Count III, Mountain West urges the Court to

stay consideration of the motion until Phase 2 of the case. Plaintiffs acknowledge that the Scheduling Order lays out two phases for discovery and motions deadlines. However, Plaintiffs contend nothing in the Order prohibits the parties from filing motions earlier than Phase 2.

The Scheduling Order, adopted by the Court on May 26, 2020, states as follows:

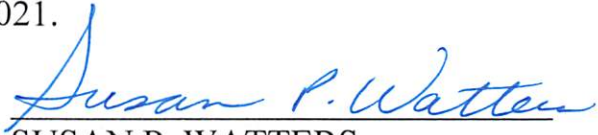
A preliminary pretrial conference was held telephonically on May 8, 2020. Evan M. Selik appeared for the Plaintiffs. Martha Sheehy appeared for the Defendant. The parties agreed the case should proceed in phases. Phase 1 will consist of discovery and a motions deadline for legal issues arising under Count III of the Second Amended Complaint. Phase 2 will cover the remaining legal issues. After Phase 1 is complete, the parties will reconvene to propose a plan for Phase 2. (Doc. 32 at 1).

This Order clearly contemplates two separate and distinct phases for discovery and motions practice. Phase 1 limits the parties to “discovery and a motions deadline for legal issues arising under Count III . . . .” (Id.) The Order also clearly states, “*After* Phase 1 is complete, the parties will reconvene to propose a plan for Phase 2.” (Id.) (emphasis added). This schedule was agreed to by both parties and the Court does not agree with Plaintiffs’ interpretation of the language. While the word ‘prohibits’ does not appear, the Order expressly reserved discovery and consideration of Phase 2 motions until after Phase 1. Because Plaintiffs’

motion for summary judgment concerns Phase 2 legal issues, the motion is premature under the stipulated Scheduling Order and shall be stayed<sup>1</sup>. Therefore,

**IT IS HEREBY ORDERED** that Defendant Mountain West Farm Bureau Mutual Insurance Company's motion to stay consideration of Plaintiffs' motion for summary judgment on Count I is **GRANTED**. The motion shall be stayed until the threshold motions submitted in Phase 1 are resolved.

DATED this 14<sup>th</sup> day of January, 2021.

  
SUSAN P. WATTERS  
United States District Judge

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<sup>1</sup> Mountain West moved, in the alternative, to defer consideration of Plaintiffs' motion until Phase 2 based on Rule 56(d)(1), MCA. Because the court found for Mountain West on its motion to stay, the Court need not address the merits of this alternative argument.